THE RECORD
OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

HARRISON TWEED, *President* · PAUL B. DE WITT, *Executive Secretary* · WHITMAN KNAPP, *Secretary*

THE RECORD is published at the House of the Association, 42 West 44th Street, New York, 18.

Volume 2 · JUNE, 1947 · *Number 6*

Association Activities

AT THE ANNUAL MEETING of the Association on May 13 Harrison Tweed was re-elected President. Mr. Tweed's remarks on his acceptance of the office will be found elsewhere in this number of THE RECORD. Chauncey B. Garver, Treasurer, and Whitman Knapp, Secretary, were also re-elected. Five Vice-Presidents were elected as follows: Bruce Bromley, Philip A. Carroll, Edward S. Greenbaum, Harold R. Medina, and Bethuel M. Webster. New members of the Executive Committee elected were R. Morton Adams, Chauncey Belknap, Norris Darrell, and Arthur Markewich.

The annual meeting also approved certain minor changes in the canons of professional ethics and received interim reports from the Committee on Post-Admission Legal Education, Cloyd Laporte, chairman; the Committee on Entertainment, Edward Everett Watts, Jr., chairman; and the Committee on Labor and Social Security Legislation, Morrell S. Lockhart, chairman.

The Labor Committee's report is published in this number of THE RECORD and also, as a supplementary note, a comparison of the labor bill passed by the Senate with the recommendations contained in the report. It is to be understood that the report is

for the information of the membership and that the report has not been approved by the Association.

It is appropriate to report here that after Mr. Lockhart had finished his interim report, the meeting, upon the motion of Julius Henry Cohen, expressed its appreciation of the excellence of Mr. Lockhart's analysis of pending labor legislation.

The annual meeting approved the reports of the Committee on the Judiciary, Bethuel M. Webster, chairman, and the report of the Committee on the Municipal Court of the City of New York, Edgar M. Souza, chairman. The report of the Judiciary Committee has been mailed to the entire membership.

ACTING UPON the recommendation of the Committee on the City Court, of which Lester Kissel is chairman, the Committee on the Judiciary endorsed as "exceptionally qualified," Justice Samuel C. Coleman of the City Court. This endorsement was approved by the Association at the annual meeting on May 13. Thereafter the City Court Committee and the Judiciary Committee brought to the attention of political leaders of all parties the Association's endorsement and its settled policy of preserving the principle of renominating sitting judges of proved ability. The two committees were gratified to learn their efforts were successful. Judge Coleman will receive bi-partisan endorsement.

IT WAS WITH considerable gratification that the Association learned that President Truman accepted the recommendation of the Association's Committee on the Judiciary and appointed Harold R. Medina Judge of the United States District Court in the Southern District.

The Committee on the Judiciary in conferences with the Attorney General had urged Mr. Medina's appointment, although it was known that certain political leaders had actively opposed the appointment and sought the nomination by the President of a candidate preferred by them on political grounds. However,

because of Mr. Medina's vast experience and high standing at the bar, the Committee with representatives of the American Bar Association and the New York State Bar Association successfully urged his appointment. In a statement issued immediately following the appointment of Mr. Medina, Mr. Bethuel M. Webster, the chairman of the Judiciary Committee, stated that "President Truman has made an outstanding contribution to the administration of justice in appointing Mr. Medina."

AT THE MEMBER exhibition of paintings and sculpture sponsored by the Art Committee, of which G. Franklin Ludington is chairman, a vote was taken on the most popular entries exhibited. The winners, in the usual order, are: *Oils*—"Clouds over Iceland" by Samuel A. Berger, "Fishing Captain" by Carl E. Newton, and "Anemones" by Freda S. Fineman. *Water-Colors*—"Woodstock" by Alexander Lindey, "Rockport Harbor" by Freda S. Fineman, and both Harris B. Steinberg and Harold Riegelman were tied for third choice with their respective paintings of "Negligence Case" and "Philippine Cavalcade." *Sculpture*—"Portrait Bust" by Edward C. Rowe, "Welsh Terrier" by David A. Woodcock, and "Suffolk Ram" by Joseph Larocque.

IN COOPERATION with the Practising Law Institute a subcommittee of the Committee on Copyright, of which subcommittee Charles S. Rosenschein is chairman, has scheduled a series of lectures on "Problems in Literary Property and Copyright" to be given at the House of the Association on Monday evenings commencing October 6, 1947, through January 12, 1948. The lectures will stress solution of practical problems arising in the field. The specific subject matter of each of the fifteen lectures and the name of each lecturer will be announced. This is a second series, the first having been given in the semester beginning October, 1944. In that series the Practising Law Institute for the first time spon-

sored a course of lectures arranged and prepared by a committee of this Association.

THE COMMITTEE on Federal Legislation, of which John E. F. Wood is chairman, is making a comprehensive study of H.R. 2055, a bill now before Congress which would revise, codify, and enact into law Title 28 of the United States Code entitled "Judiciary Code and Judiciary." The proposed codification would make a number of changes in the fields of jurisdiction, venue, and removal of actions. Members of the Association having an interest in this legislation are invited to contribute their criticisms of the bill.

THE COMMITTEE on Junior Bar Activities on May 12 held a successful forum on the mechanics of law office practice, entitled "Another Part of the Legal Forest." Some 250 lawyers and law students attended. Harrison Tweed presided and the speakers were John A. Killoran, Primer for Probaters, The Pitfalls of Probate Practice; Philip D. Ferrall, The Compleat Conveyancer, Practical Aspects of the Recording Statutes; and Hyman W. Gamso, How to Win Friends and Influence County Clerks, The Administration of the County Clerk's Office. Albert D. Jordan was chairman of the subcommittee which arranged the forum.

AT A RECENT MEETING the Committee on Courts of Superior Jurisdiction, Ralph D. Ray, chairman, entertained as its guest Supreme Court Justice Denis O. Cohalan, who discussed with the committee calendar practice in the Supreme Court. The committee has been studying this subject for some time and, it is anticipated, will soon issue a report on the results of its study.

AT THE INVITATION of the Association's Committee on Unlawful Practice of the Law, L. Reyner Samet, chairman, members of

similar committees of other bar associations attended an informal meeting at the House of the Association on May 6. As a result of the meeting it was decided to organize a Joint Committee on the Unlawful Practice of the Law, with representatives of all bar associations on it. The purpose of the committee would be to coordinate the work of the associations in the field of unlawful practice.

FREDERICK VP. BRYAN has been designated chairman of a newly established Special Committee on Military Justice. Other members of the Committee are Arthur E. Farmer, George A. Spiegelberg, Leonard M. Wallstein, Jr., and Richard H. Wels. The Committee is presently studying H. R. 2575 and H. R. 3631, bills before the Congress dealing with the improvement of the administration of justice in the Army and Navy. The Committee will welcome suggestions from members.

The Calendar of the Association for June

(As of May 16, 1947)

June 4 Meeting of Committee on Professional Ethics

June 10 *Adjourned Annual Meeting of Association 5 P.M.*
Meeting of Executive Committee

June 12 "Spring Party." Auspices of Committee on Entertainment

June 17 Meeting of Committee on Junior Bar Activities

Remarks of the President at the Annual Meeting

May 13, 1947

I appreciate the confidence that the Nominating Committee and at least some of those present tonight have shown in me. I should like to consider it a great honor to be elected for a third term and to go off on a vacation in celebration. But, being realistic, I am compelled to regard it as a job to be done and as an appropriate retaliation in view of existing conditions, of which this scaffolding is one example. There is much sense in the sentiment "Tweed got us into this mess, now make him get us out of it."

I believe that there ought to be only such departure from tradition as is really necessary. So I want it to be understood that I am in for what might be termed a hangover year and not a second two-year term. It is for you to find a successor. I shall take no part in that. The Executive Committee and others must select names for submission to the Nominating Committee next spring.

Speaking of tradition, I have a guilty feeling that perhaps we have departed further than we should have in substituting at all Stated Meetings a preceding buffet supper for post-meeting refreshments. So, at the last moment it has been arranged that there shall be food and drinks this evening, without expense to the Association, for all those who are here. Whether this should become a tradition will depend, I suppose, on how auspiciously it is inaugurated.

When I took this job I said that I intended to have fun doing it because I thought that the only proper spirit in which to tackle any job. That intention has been realized. I have enjoyed the work and I value the friendships I have made. I like to think that some of the rest of you have had fun. By this I do not mean just sipping cocktails and looking into the eyes of the lady lawyers. I mean the fun that comes from working together in a common enterprise which is accomplishing something. At the same time I

believe that a little liquid refreshment and a little laughter and the occasional presence of lady lawyers helps the enterprise along. And it is important that the enterprise should go forward. Every day brings more conclusive evidence of the need for straight thinking and clear speaking both in national and international affairs. Those are a lawyer's specialties and we must contribute generously from them towards the solution of public problems.

I think that the Association is going ahead. We have not yet solved the labor issue. But at least we have proved that we are willing to try and that we are able to approach it in a spirit of fairness and compromise and without too much thought of party politics or client's cash. We have not yet secured a perfect judiciary but it is known in the right places that we are willing to fight for improvement in the selection of judges. And I believe that given a really good case we can not only fight, but win. Our legislative efforts have left much undone that we wanted to do but we are learning how to proceed and I am optimistic about future accomplishments.

We lack the money we ought to have. It is an unalterable truth that nothing can be done without spending money. It is equally true that though the amateur is a fine fellow and a noble citizen, he is not, either in baseball or bar associations or anywhere else, comparable to the professional. He lacks the time, the experience and the absolute devotion necessary to achieve maximum results.

There are still many lawyers, both young and old, of the sort who ought to, but do not, belong to this Association. More members will mean more money. But we are going to elect them because we want their *membership,* not because we want their *money*. It has always been, it still is, and it should continue to be, a privilege and an honor to be a member of this Association. We must not lower our standards. There are all sorts and varieties of voluntary organizations in this world today and it is appropriate and proper and in the public interest that there should be one with purposes and a membership such as ours.

For further revenue we must look to more and more Sustaining Members. We are still nearly three hundred short of our goal of

one thousand. That would mean that the total revenue from Sustaining Members would be $50,000. This sounds like a lot of money but it is only 20 per cent of the cost of operation of our last pre-war year, 1940–1941. In most enterprises, costs of operation have gone up far more than 20 per cent, even though activities have remained static. And our activities certainly have not done that.

I venture to remind you of the Endowment Fund which now makes it possible to contribute to important activities of the Association and secure the income or estate tax deduction which should be accorded to such a gift but which has been denied to gifts made directly to the Association itself.

We must not be selfsatisfied. But we must not depreciate ourselves. Our Association was the second in this country. Other associations elsewhere have gone ahead of us. But we are closing the gap. And, as I have looked around me in the last few months, I have seen no signs that we are tiring. I predict that soon we shall have our rightful place as the leader. When we do, it will be because of the interest and effectiveness of the Committees and their Chairmen. I get a great deal of credit to which I am not entitled at all and which I want vehemently to disclaim. I look forward to another year of cooperation and camaraderie. I will do my best to make it a rewarding one.

Some Reflections on the Reading of Statutes

BY MR. JUSTICE FELIX FRANKFURTER*

THE BENJAMIN N. CARDOZO LECTURE
before The Association of
the Bar of the City of New York, March 18, 1947

A single volume of 320 octavo pages contains all the laws passed by Congress during its first five years, when measures were devised for getting the new government under way; 26 acts were passed in the 1789 session, 66 in 1790, 94 in 1791, 38 in 1792, 63 in 1793. For the single session of the 70th Congress, to take a pre-depression period, there are 993 enactments in a monstrous volume of 1014 pages—quarto not octavo—with a comparable range of subject matter. Do you wonder that one for whom the Statutes at Large constitute his staple reading should have sympathy, at least in his moments of baying at the moon, with the touching Congressman who not so long ago proposed a "Commission on Centralization" to report whether "the Government has departed from the concept of the founding fathers" and what steps should be taken "to restore the Government to its original purposes and sphere of activity"? Inevitably the work of the Supreme Court reflects the great shift in the center of gravity of law-making. Broadly speaking, the number of cases disposed of by opinions has not changed from term to term. But even as late as 1875 more than 40% of the controversies before the Court were common-law litigation, fifty years later only 5%, while today cases not resting on statutes are reduced almost to zero. It is therefore accurate to say that courts have ceased to be the primary makers of law in the sense in which they "legislated" the common law. It is certainly true of the Supreme Court, that almost every case has a statute at its heart or close to it.

* It gives me pleasure to make acknowledgment to my learned friends, Philip Elman, Louis Henkin and Philip Kurland, Esqs. They have no responsibility for what I have said; they are merely subjected to my gratitude.

This does not mean that every case before the Court involves questions of statutory construction. If only literary perversity or jaundiced partisanship can sponsor a particular rendering of a statute there is no problem. When we talk of statutory construction we have in mind cases in which there is a fair contest between two readings, neither of which comes without respectable title deeds. A problem in statutory construction can seriously bother courts only when there is a contest between probabilities of meaning.

DIFFICULTIES OF CONSTRUCTION

Though it has its own preoccupations and its own mysteries, and above all its own jargon, judicial construction ought not to be torn from its wider, non-legal context. Anything that is written may present a problem of meaning, and that is the essence of the business of judges in construing legislation. The problem derives from the very nature of words. They are symbols of meaning. But unlike mathematical symbols, the phrasing of a document, especially a complicated enactment, seldom attains more than approximate precision. If individual words are inexact symbols, with shifting variables, their configuration can hardly achieve invariant meaning or assured definiteness. Apart from the ambiguity inherent in its symbols, a statute suffers from dubieties. It is not an equation or a formula representing a clearly marked process, nor is it an expression of individual thought to which is imparted the definiteness a single authorship can give. A statute is an instrument of government partaking of its practical purposes but also of its infirmities and limitations, of its awkward and groping efforts. With one of his flashes of insight, Mr. Justice Johnson called the science of government "the science of experiment." *Anderson* v. *Dunn,* 6 Wheat. 204, 226. The phrase, uttered a hundred and twenty-five years ago, has a very modern ring, for time has only served to emphasize its accuracy. To be sure, laws can measurably be improved with improvement in the mechanics of legislation, and the need for interpretation is usually in inverse ratio to the care and imagination of drafts-

men. The area for judicial construction may be contracted. A large area is bound to remain.

The difficulties are inherent not only in the nature of words, of composition, and of legislation generally. They are often intensified by the subject matter of an enactment. The imagination which can draw an income tax statute to cover the myriad transactions of a society like ours, capable of producing the necessary revenue without producing a flood of litigation, has not yet revealed itself. (See 1 Report of Income Tax Codification Committee, Cmd. 5131, (1936) pp. 16 to 19.) Moreover, government sometimes solves problems by shelving them temporarily. The legislative process reflects that attitude. Statutes as well as constitutional provisions at times embody purposeful ambiguity or are expressed with a generality for future unfolding. "The prohibition contained in the Fifth Amendment refers to infamous crimes—a term obviously inviting interpretation in harmony with conditions and opinions prevailing from time to time." Mr. Justice Brandeis in *United States* v. *Moreland*, 258 U. S. 433, 451. And Mr. Justice Cardozo once remarked, "a great principle of constitutional law is not susceptible of comprehensive statement in an adjective." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 327.

The intrinsic difficulties of language and the emergence after enactment of situations not anticipated by the most gifted legislative imagination, reveal doubts and ambiguities in statutes that compel judicial construction. The process of construction, therefore, is not an exercise in logic or dialectic: The aids of formal reasoning are not irrelevant; they may simply be inadequate. The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone. To speak of it as a practical problem is not to indulge a fashion in words. It must be that, not something else. Not, for instance, an opportunity for a judge to use words as "empty vessels into which he can pour anything he will"—his caprices, fixed notions, even statesmanlike beliefs in a particular policy. Nor, on the other

hand, is the process a ritual to be observed by unimaginative adherence to well-worn professional phrases. To be sure, it is inescapably a problem in the keeping of the legal profession and subject to all the limitations of our adversary system of adjudication. When the judge, selected by society to give meaning to what the legislature has done, examines the statute, he does so not in a laboratory or in a classroom. Damage has been done or exactions made, interests are divided, passions have been aroused, sides have been taken. But the judge, if he is worth his salt, must be above the battle. We must assume in him not only personal impartiality but intellectual disinterestedness. In matters of statutory construction also it makes a great deal of difference whether you start with an answer or with a problem.

THE JUDGE'S TASK

Everyone has his own way of phrasing the task confronting judges when the meaning of a statute is in controversy. Judge Learned Hand speaks of the art of interpretation as "the proliferation of purpose." Who am I not to be satisfied with Learned Hand's felicities? And yet that phrase might mislead judges intellectually less disciplined than Judge Hand. It might justify interpretations by judicial libertines, not merely judicial libertarians. My own rephrasing of what we are driving at is probably no more helpful, and is much longer than Judge Hand's epigram. I should say that the troublesome phase of construction is the determination of the extent to which extraneous documentation and external circumstances may be allowed to infiltrate the text on the theory that they were part of it, written in ink discernible to the judicial eye.

Chief Justice White was happily endowed with the gift of finding the answer to problems by merely stating them. Often have I envied him this faculty but never more than in recent years. No matter how one states the problem of statutory construction, for me, at least, it does not carry its own answer. Though my business throughout most of my professional life has been

with statutes, I come to you empty-handed. I bring no answers. I suspect the answers to the problems of an art are in its exercise. Not that one does not inherit, if one is capable of receiving it, the wisdom of the wise. But I confess unashamedly that I do not get much nourishment from books on statutory construction, and I say this after freshly reexamining them all, scores of them.

When one wants to understand or at least get the feeling of great painting, one does not go to books on the art of painting. One goes to the great masters. And so I have gone to great masters to get a sense of their practise of the art of interpretation. However, the art of painting and the art of interpretation are very different arts. Law, Holmes told us, becomes civilized to the extent that it is self-conscious of what it is doing. And so the avowals of great judges regarding their process of interpretation and the considerations that enter into it are of vital importance, though that ultimate something called the judgment upon the avowed factors escapes formulation and often, I suspect, even awareness. Nevertheless, an examination of some 2,000 cases, the bulk of which directly or indirectly involves matters of construction, ought to shed light on the encounter between the judicial and the legislative processes, whether that light be conveyed by hints, by explicit elucidation, or, to mix the metaphor, through the ancient test, by their fruits.

And so I have examined the opinions of Holmes, Brandeis and Cardozo and sought to derive from their treatment of legislation what conclusions I could fairly draw, freed as much as I could be from impressions I had formed in the course of the years.

Holmes came to the Supreme Court before the great flood of recent legislation, while the other two, especially Cardozo, appeared at its full tide. The shift in the nature of the Court's business led to changes in its jurisdiction, resulting in a concentration of cases involving the legislative process. Proportionately to their length of service and the number of opinions, Brandeis and Cardozo had many more statutes to construe. And the statutes presented for their interpretation became increasingly complex, bringing in their train a quantitatively new role for administra-

tive regulations. Nevertheless, the earliest opinions of Holmes on statutory construction, insofar as he reveals himself, cannot be distinguished from Cardozo's last opinion, though the latter's process is more explicit.

A judge of marked individuality stamps his individuality on what he writes, no matter what the subject. What is however striking about the opinions of the three Justices in this field is the essential similarity of their attitude and of their appraisal of the relevant. Their opinions do not disclose a private attitude for or against extension of governmental authority by legislation, or towards the policy of particular legislation, which consciously or imperceptibly affected their judicial function in construing laws. It would thus be a shallow judgment that found in Mr. Justice Holmes' dissent in the *Northern Securities* case (193 U. S. 197, 400) an expression of his disapproval of the policy behind the Sherman Law. His habit of mind—to be as accurate as one can—had a natural tendency to confine what seemed to him familiar language in a statute to its familiar scope. But the proof of the pudding is that his private feelings did not lead him to invoke the rule of indefiniteness to invalidate legislation of which he strongly disapproved (Compare *Nash* v. *United States,* 229 U. S. 373, and *International Harvester Co.* v. *Kentucky,* 234 U. S. 216), or to confine language in a constitution within the restrictions which he gave to the same language in a statute. (Compare *Towne* v. *Eisner,* 245 U. S. 418, and *Eisner* v. *Macomber,* 252 U. S. 189.)

The reservations I have just made indicate that such differences as emerge in the opinions of the three Justices on statutory construction, are differences that characterize all of their opinions, whether they are concerned with interpretation or constitutionality, with admiralty or patent law. They are differences of style. In the case of each, the style is the man.

If it be suggested that Mr. Justice Holmes is often swift, if not cavalier, in his treatment of statutes, there are those who level the same criticism against his opinions generally. It is merited in the sense that he wrote, as he said, for those learned in the art.

I need hardly add that for him "learned" was not a formal term comprehending the whole legal fraternity. When dealing with problems of statutory construction also he illumined whole areas of doubt and darkness with insights enduringly expressed, however briefly. To say "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using commonsense in construing laws as saying what they obviously mean," *Roschen* v. *Ward*, 279 U. S. 337, 339, is worth more than most of the dreary writing on how to construe penal legislation. Again when he said that "the meaning of a sentence is to be felt rather than to be proved," *United States* v. *Johnson*, 221 U. S. 488, 496, he expressed the wholesome truth that the final rendering of the meaning of a statute is an act of judgment. He would shudder at the thought that by such a statement he was giving comfort to the school of visceral jurisprudence. Judgment is not drawn out of the void but is based on the correlation of imponderables all of which need not, because they cannot, be made explicit. He was expressing the humility of the intellectual that he was, whose standards of exactitude distrusted pretensions of certainty, believing that legal controversies that are not frivolous almost always involve matters of degree, and often degree of the nicest sort. Statutory construction implied the exercise of choice, but precluded the notion of capricious choice as much as choice based on private notions of policy. One gets the impression that in interpreting statutes Mr. Justice Holmes reached meaning easily, as was true of most of his results, with emphasis on the language in the totality of the enactment and the felt reasonableness of the chosen construction. He had a lively awareness that a statute was expressive of purpose and policy, but in his reading of it he tended to hug the shores of the statute itself, without much re-enforcement from without.

Mr. Justice Brandeis, on the other hand, in dealing with these problems as with others, would elucidate the judgment he was exercising by proof or detailed argument. In such instances, especially when in dissent, his opinions would draw on the whole arsenal of aids to construction. More often than either Holmes

or Cardozo, Brandeis would invoke the additional weight of some "rule" of construction. But he never lost sight of the limited scope and function of such "rules." Occasionally, however, perhaps because of the nature of a particular statute, the minor importance of its incidence, the pressure of judicial business or even the temperament of his law clerk, whom he always treated as a co-worker, Brandeis disposed of a statute even more dogmatically, with less explicit elucidation, than did Holmes.

For Cardozo, statutory construction was an acquired taste. He preferred common law subtleties, having great skill in bending them to modern uses. But he came to realize that problems of statutory construction had their own exciting subtleties and gave ample employment to philosophic and literary talents. Cardozo's elucidation of how meaning is drawn out of a statute gives proof of the wisdom and balance which, combined with his learning, made him a great judge. While the austere style of Brandeis seldom mitigated the dry aspect of so many problems of statutory construction, Cardozo managed to endow even these with the glow and softness of his writing. The differences in the tone and color of their style as well as in the moral intensity of Brandeis and Cardozo made itself felt when they wrote full-dress opinions on problems of statutory construction. Brandeis almost compels by demonstration; Cardozo woos by persuasion.

SCOPE OF THE JUDICIAL FUNCTION

From the hundreds of cases in which our three Justices construed statutes one thing clearly emerges. The area of free judicial movement is considerable. These three remembered that laws are not abstract propositions. They are expressions of policy arising out of specific situations and addressed to the attainment of particular ends. The difficulty is that the legislative ideas which laws embody are both explicit and immanent. And so the bottom problem is: What is below the surface of the words and yet fairly a part of them? Words in statutes are not unlike words in a foreign language in that they too have "associations, echoes,

and overtones." (See Sir Ernest Barker's Introduction to his translation of Aristotle's Politics, p. lxiii.) Judges must retain the associations, hear the echoes, and capture the overtones. In one of his very last opinions, dealing with legislation taxing the husband on the basis of the combined income of husband and wife, Holmes wrote: "The statutes are the outcome of a thousand years of history. . . . They form a system with echoes of different moments, none of which is entitled to prevail over the other." *Hoeper* v. *Tax Commission,* 284 U. S. 206, 219.

What exactions such a duty of construction places upon judges, and with what freedom it entrusts them! John Chipman Gray was fond of quoting from a sermon by Bishop Hoadley that "Whoever hath an *absolute authority* to *interpret* any written or spoken laws, it is he who is truly the law-giver to all intents and purposes, and not the person who first wrote or spoke them." Gray, Nature and Sources of the Law (2nd ed. 1921) 102, 125, 172. By admitting that there is some substance to the good Bishop's statement, one does not subscribe to the notion that they are law-givers in any but a very qualified sense.

Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policymaking might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction. "If there is no meaning in it," said Alice's King, "that saves a world of trouble, you know, as we needn't try

to find any." Legislative words presumably have meaning and so we must try to find it.

This duty of restraint, this humility of function as merely the translator of another's command, is a constant theme of our Justices. It is on the lips of all judges, but seldom, I venture to believe, has the restraint which it expresses, or the duty which it enjoins, been observed with so consistent a realization that its observance depends on self-conscious discipline. Cardozo put it this way: "We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it." *Anderson* v. *Wilson,* 289 U. S. 20, 27. It was expressed more fully by Mr. Justice Brandeis when the temptation to give what might be called a more liberal interpretation could not have been wanting. "The particularization and detail with which the scope of each provision, the amount of the tax thereby imposed, and the incidence of the tax, were specified, preclude an extension of any provision by implication to any other subject. . . . What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertance, may be included within its scope." *Iselin* v. *United States,* 270 U. S. 245, 250–51. An omission, at the time of enactment, whether careless or calculated, cannot be judicially supplied however much later wisdom may recommend the inclusion.

The vital difference between initiating policy, often involving a decided break with the past, and merely carrying out a formulated policy, indicates the relatively narrow limits within which choice is fairly open to courts and the extent to which interpreting law is inescapably making law. To say that, because of this restricted field of interpretive declaration, courts make law just as do legislatures is to deny essential features in the history of our democracy. It denies that legislation and adjudication have had different lines of growth, serve vitally different purposes, function under different conditions, and bear different responsibilities. The judicial process of dealing with words is not at all Alice in Wonderland's way of dealing with them. Even in matters legal

some words and phrases, though very few, approach mathematical symbols and mean substantially the same to all who have occasion to use them. Other law terms like "police power" are not symbols at all but labels for the results of the whole process of adjudication. In between lies a gamut of words with different denotations as well as connotations. There are varying shades of compulsion for judges behind different words, differences that are due to the words themselves, their setting in a text, their setting in history. In short, judges are not unfettered glossators. They are under a special duty not to overemphasize the episodic aspects of life and not to undervalue its organic processes—its continuities and relationships. For judges at least it is important to remember that continuity with the past is not only a necessity but even a duty.

There are not wanting those who deem naive the notion that judges are expected to refrain from legislating in construing statutes. They may point to cases where even our three Justices apparently supplied an omission or engrafted a limitation. Such an accusation cannot be rebutted or judged in the abstract. In some ways, as Holmes once remarked, every statute is unique. Whether a judge does violence to language in its total context is not always free from doubt. Statutes come out of the past and aim at the future. They may carry implicit residues or mere hints of purpose. Perhaps the most delicate aspect of statutory construction is not to find more residues than are implicit nor purposes beyond the bound of hints. Even for a judge most sensitive to the traditional limitation of his function, this is a matter for judgment not always easy of answer. But a line does exist between omission and what Holmes called "misprision or abbreviation that does not conceal the purpose." *St. Louis–San Francisco Ry.* v. *Middlekamp,* 256 U. S. 226, 232. Judges may differ as to the point at which the line should be drawn, but the only sure safeguard against crossing the line between adjudication and legislation is an alert recognition of the necessity not to cross it and instinctive, as well as trained, reluctance to do so.

In those realms where judges directly formulate law because the chosen lawmakers have not acted, judges have the duty of adaptation and adjustment of old principles to new conditions.

But where policy is expressed by the primary law-making agency in a democracy, that is by the legislature, judges must respect such expressions by adding to or subtracting from the explicit terms which the lawmakers used no more than is called for by the shorthand nature of language. Admonitions, like that of Justice Brandeis in the *Iselin* case, that courts should leave even desirable enlargement to Congress will not by itself furnish the meaning appropriate for the next statute under scrutiny. But as is true of other important principles, the intensity with which it is believed may be decisive of the outcome.

THE PROCESS OF CONSTRUCTION

Let me descend to some particulars.

The text.—Though we may not end with the words in construing a disputed statute, one certainly begins there. You have a right to think that a hoary platitude, but it is a platitude too often not observed at the bar. In any event, it may not take you to the end of the road. The Court no doubt must listen to the voice of Congress. But often Congress cannot be heard clearly because its speech is muffled. Even when it has spoken, it is as true of Congress as of others that what is said is what the listener hears. Like others, judges too listen with what psychologists used to call the apperception mass, which I take it means in plain English that one listens with what is already in one's head. One more caution is relevant when one is admonished to listen attentively to what a statute says. One must also listen attentively to what it does not say.

We must, no doubt, accord the words the sense in which Congress used them. That is only another way of stating the central problem of decoding the symbols. It will help to determine for whom they were meant. Statutes are not archaeological documents to be studied in a library. They are written to guide the actions of men. As Mr. Justice Holmes remarked upon some Indian legislation "The word was addressed to the Indian mind," *Fleming* v. *McCurtain*, 215 U. S. 56, 60. If a statute is written for ordinary folk, it would be arbitrary not to assume that Congress

intended its words to be read with the minds of ordinary men. If they are addressed to specialists, they must be read by judges with the minds of the specialists.

And so we assume that Congress uses common words in their popular meaning, as used in the common speech of men. The cases speak of the "meaning of common understanding," "the normal and spontaneous meaning of language," "the common and appropriate use," "the natural straightforward and literal sense," and similar variants. In *McBoyle* v. *United States,* 283 U. S. 25, 26, Mr. Justice Holmes had to decide whether an aeroplane is a "motor vehicle" within the meaning of the Motor Vehicle Theft Act. He thus disposed of it: "No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air, and sometimes legislation extends the use in that direction. . . . But in everyday speech 'vehicles' calls up a picture of a thing moving on land."

Sometimes Congress supplies its own dictionary. It did so in 1871 in a statute defining a limited number of words for use as to all future enactments. It may do so, as in recent legislation, by a section within the statute containing detailed definitions. Or there may be indications from the statute that words in it are the considered language of legislation. "If Congress has been accustomed to use a certain phrase with a more limited meaning than might be attributed to it by common practice, it would be arbitrary to refuse to consider that fact when we come to interpret a statute. But, as we have said, the usage of Congress simply shows that it has spoken with careful precision, that its words mark the exact spot at which it stops." *Boston Sand Co.* v. *United States,* 278 U. S. 41, 48. Or words may acquire scope and function from the history of events which they summarize or from the purpose which they serve.

> "However colloquial and uncertain the words had been in the beginning, they had won for themselves finally an acceptance and a definiteness that made them fit to play a part in the legislative process. They came into the statute . . . freighted with the meaning imparted to them by the mischief to be remedied and by contemporaneous discus-

> sion. . . . In such conditions history is a teacher that is not to be ignored." (Cardozo, *Duparquet Co.* v. *Evans,* 297 U. S. 216, 220–21.)

Words of art bring their art with them. They bear the meaning of their habitat whether it be a phrase of technical significance in the scientific or business world, or whether it be loaded with the recondite connotations of feudalism. Holmes made short shrift of a contention by remarking that statutes used "familiar legal expressions in their familiar legal sense." *Henry* v. *United States,* 251 U. S. 393, 395. The peculiar idiom of business or of administrative practise often modifies the meaning that ordinary speech assigns to language. And if a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.

The context.—Legislation is a form of literary composition. But construction is not an abstract process equally valid for every composition, not even for every composition whose meaning must be judicially ascertained. The nature of the composition demands awareness of certain pre-suppositions. For instance, the words in a constitution may carry different meanings from the same words in a statute precisely because "it is a constitution we are expounding." The reach of this consideration was indicated by Mr. Justice Holmes in langauge that remains fresh no matter how often repeated:

> "when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago." *Missouri* v. *Holland,* 252 U. S. 416, 433.

And so, the significance of an enactment, its antecedents as well as its later history, its relation to other enactments, all may be

relevant to the construction of words for one purpose and in one setting but not for another. Some words are confined to their history; some are starting points for history. Words are intellectual and moral currency. They come from the legislative mint with some intrinsic meaning. Sometimes it remains unchanged. Like currency, words sometimes appreciate or depreciate in value.

Frequently the sense of a word cannot be got except by fashioning a mosaic of significance out of the innuendoes of disjointed bits of statute. Cardozo phrased this familiar phenomenon by stating that "the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view." *Panama Refining Co.* v. *Ryan,* 293 U. S. 388, 433, 439. And to quote Cardozo once more on this phase of our problem: "There is need to keep in view also the structure of the statute, and the relation, physical and logical, between its several parts." *Duparquet Co.* v. *Evans,* 297 U. S. 216, 218.

The generating consideration is that legislation is more than composition. It is an active instrument of government which, for purposes of interpretation, means that laws have ends to be achieved. It is in this connection that Holmes said "words are flexible." *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50, 58. Again it was Holmes, the last judge to give quarter to loose thinking or vague yearning, who said that "the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down." *United States* v. *Whitridge,* 197 U. S. 135, 143. And it was Holmes who chided courts for being "apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them." *Olmstead* v. *United States,* 277 U. S. 438, 469. Note, however, that he found the policy in "those words"!

"PROLIFERATION OF PURPOSE"

You may have observed that I have not yet used the word "intention." All these years I have avoided speaking of the "legislative intent" and I shall continue to be on my guard

against using it. The objection to "intention" was indicated in a letter by Mr. Justice Holmes which the recipient kindly put at my disposal:

> "Only a day or two ago—when counsel talked of the intention of a legislature, I was indiscreet enough to say I don't care what their intention was. I only want to know what the words mean. Of course the phrase often is used to express a conviction not exactly thought out—that you construe a particular clause or expression by considering the whole instrument and any dominant purposes that it may express. In fact intention is a residuary clause intended to gather up whatever other aids there may be to interpretation beside the particular words and the dictionary."

If that is what the term means, it is better to use a less beclouding characterization. Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose. That is what the judge must seek and effectuate, and he ought not be led off the trail by tests that have overtones of subjective design. We are not concerned with anything subjective. We do not delve into the mind of legislators or their draftsmen, or committee members. Against what he believed to be such an attempt Cardozo once protested:

> "The judgment of the court, if I interpret the reasoning aright, does not rest upon a ruling that Congress would have gone beyond its power if the purpose that it professed was the purpose truly cherished. The judgment of the court rests upon the ruling that another purpose, not professed, may be read beneath the surface, and by the purpose so imputed the statute is destroyed. Thus the process of psychoanalysis has spread to unaccustomed fields. There is a wise and ancient doctrine that a court will not inquire into the motives of a legislative body. . . ." *United States* v. *Constantine*, 296 U. S. 287 at 298–99.

The difficulty in many instances where a problem of meaning arises is that the enactment was not directed towards the troubling question. The problem might then be stated, as once it was by Mr. Justice Cardozo, "which choice is it the more likely that Congress would have made?" *Burnet* v. *Guggenheim,* 288 U. S. 280, 285. While in its context the significance and limitations of this question are clear, thus to frame the question too often tempts inquiry into the subjective and might seem to warrant the court in giving answers based on an unmanifested legislative state of mind. But the purpose which a court must effectuate is not that which Congress should have enacted, or would have. It is that which it did enact, however inaptly, because it may fairly be said to be imbedded in the statute, even if a specific manifestation was not thought of, as is often the very reason for casting a statute in very general terms.

Often the purpose or policy that controls is not directly displayed in the particular enactment. Statutes cannot be read intelligently if the eye is closed to considerations evidenced in affiliated statutes, or in the known temper of legislative opinion. Thus, for example, it is not lightly to be presumed that Congress sought to infringe on "very sacred rights." *Milwaukee Publishing Co.* v. *Burleson,* 255 U. S. 407, 438. This improbability will be a factor in determining whether language, though it should be so read if standing alone, was used to effect such a drastic change.

More frequently still, in the interpretation of recent regulatory statutes, it becomes important to remember that the judicial task in marking out the extent to which Congress has exercised its constitutional power over commerce, is not that of devising an abstract formula. The task is one of accommodation as between assertions of new federal authority and historic functions of the individual States. Federal legislation of this character cannot therefore be construed without regard to the implications of our dual system of government. In such cases, for example, it is not to be assumed as a matter of course that when Congress adopts a new scheme for federal industrial regulation, it deals with all situations falling within the general mischief which gave rise to

the legislation. The underlying assumptions of our dual form of government, and the consequent presuppositions of legislative draftsmanship which are expressive of our history and habits, cut across what might otherwise be the implied range of legislation. The history of congressional legislation regulating not only interstate commerce as such but also activities intertwined with it, justify the generalization that, when the federal government takes over such local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of State and national authority, those charged with the duty of legislating are reasonably explicit and do not entrust its attainment to that retrospective expansion of meaning which properly deserves the stigma of judicial legislation.

SEARCH FOR PURPOSE

How then does the purpose which a statute expresses reveal itself, particularly when the path of purpose is not straight and narrow? The English courts say: look at the statute and look at nothing else. Lord Reading so advised the House of Lords when a bill was before it as to which the Attorney General had given an interpretative explanation during its passage in the House of Commons: "Neither the words of the Attorney General nor the words of an ex-Lord Chancellor, spoken in this House, as to the meaning intended to be given to language used in a Bill, have the slightest effect or relevance when the matter comes to be considered by a Court of Law. The one thing which stands out beyond all question is that in a Court of Law you are not allowed to introduce observations made either by the Government or by anybody else, but the Court will only give consideration to the Statute itself. That is elementary, but I think it is necessary to bring it home to your Lordships because I think too much importance can be attached to language which fell from the Attorney-General." (94 Parl. Deb. 5th Series, Lords, col. 232, Nov. 8, 1934.) How narrowly the English courts confine their search for understanding an English enactment is vividly illustrated by the pronouncements of Lord Haldane, surely one of the most broadminded of all modern judges. "My Lords," he said in

Viscountess Rhondda's Claim, [1922] 2 A. C. 339 at 383, "the only other point made on the construction of the Act was that this Committee might be entitled to look at what passed while the Bill was still a Bill and in the Committee stage in the House. It was said that there amendments were moved and discussions took place which indicated that the general words of s. 1 were not regarded by your Lordships' House as covering the title to a seat in it. But even assuming that to be certain, I do not think, sitting as we do with the obligation to administer the principles of the law, that we have the least right to look at what happened while the Bill was being discussed in Committee and before the Act was passed. Decisions of the highest authority show that the interpretation of an Act of Parliament must be collected from the words in which the Sovereign has made into law the words agreed upon by both Houses. The history of previous changes made or discussed cannot be taken to have been known or to have been in view when the Royal assent was given. The contrary was suggested at the Bar, though I do not think the point was pressed, and I hope that it will not be thought that in its decision this Committee has given any countenance to it. To have done so would, I venture to say, have been to introduce confusion into well-settled law. In *Millar* v. *Taylor* the principle of construction was laid down in words, which have never, so far as I know, been seriously challenged, by Willes J. as long ago as in 1769: 'The sense and meaning of an Act of Parliament must be collected from what it says when passed into a law; and not from the history of changes it underwent in the house where it took its rise. That history is not known to the other house or to the sovereign.' "

These current English rules of construction are simple. They are too simple. If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded. The rigidity of English courts in interpreting language merely by reading it disregards the fact that enactments are, as it were, organisms which exist in their environment. One wonders whether English judges are confined psychologically as they purport to be legally. The judges deem themselves limited to reading the words of a statute. But can they really escape placing the

words in the context of their minds, which after all are not automata applying legal logic but repositories of all sorts of assumptions and impressions? Such a modest if not mechanical view of the task of construction disregards legal history. In earlier centuries the judges recognized that the exercise of their judicial function to understand and apply legislative policy is not to be hindered by artificial canons and limitations. The well known resolutions in *Heydon's Case,* 3 Co. Rep. 7a, have the flavor of Elizabethan English but they express the substance of a current volume of U. S. Reports as to the considerations relevant to statutory interpretation. To be sure, early English legislation helped ascertainment of purpose by explicit recitals; at least to the extent of defining the mischief against which the enactment was directed. To take a random instance, an act in the reign of Edward VI reads: " 'Forasmuch as intolerable Hurts and Troubles to the Commonwealth of this Realm doth daily grow and increase through such Abuses and Disorders as are had and used in common Alehouses and other Houses called Tipling houses': (2) it is therefore enacted by the King our Sovereign Lord, etc." 6 Edward VI c. 25 (1552); 2 Stats. at Large 458. Judicial construction certainly became more artificial after the practise of elucidating recitals ceased. It is to be noted that Macaulay, a great legislative draftsman, did not think much of preambles. He believed that too often they are jejune because legislators may agree on what ought to be done, while disagreeing about the reasons for doing it. At the same time he deemed it most important that in some manner governments should give reasons for their legislative course. (See Lord Macaulay's Legislative Minutes (ed. by C. D. Dharker) pp. 145 *et seq.*) When not so long ago the Parliamentary mechanism was under scrutiny of the Lord Chancellor's Committee, dissatisfaction was expressed with the prevailing practise of English courts not to go outside the statutes. It was urged that the old practise of preambles be restored or that a memorandum of explanation go with proposed legislation. (See Professor Laski's Note to the Report of the Committee on Ministers' Powers, Cmd. 4060, Annex V, p. 135, 1932.)

At the beginning, the Supreme Court reflected the early English attitude. With characteristic hardheadedness Chief Justice Marshall struck at the core of the matter with the observation "Where the mind labours to discover the design of the legislature, it seizes everything from which aid can be derived." *United States* v. *Fisher,* 2 Cranch 358, 386. This commonsensical way of dealing with statutes fell into disuse, and more or less catchpenny canons of construction did service instead. To no small degree a more wooden treatment of legislation was due, I suspect, to the fact that the need for keeping vividly in mind the occasions for drawing on all aids in the process of distilling meaning from legislation was comparatively limited. As the area of regulation steadily widened, the impact of the legislative process upon the judicial brought into being, and compelled consideration of, all that convincingly illumines an enactment, instead of merely that which is called, with delusive simplicity, "the end result." Legislatures themselves provided illumination by general definitions, special definitions, explicit recitals of policy, and even directions of attitudes appropriate for judicial construction. Legislative reports were increasingly drawn upon, statements by those in charge of legislation, reports of investigating committees, recommendations of agencies entrusted with the enforcement of laws, etc. etc. When Mr. Justice Holmes came to the Court, the U. S. Reports were practically barren of references to legislative materials. These swarm in current volumes. And let me say in passing that the importance that such materials play in Supreme Court litigation carry far-reaching implications for bench and bar.

The change I have summarized was gradual. Undue limitations were applied even after Courts broke out of the mere language of a law. We find Mr. Justice Holmes saying, "It is a delicate business to base speculations about the purposes or construction of a statute upon the vicissitudes of its passage." *Pine Hill Co.* v. *United States,* 259 U. S. 191, 196. And as late as 1925 he referred to earlier bills relating to a statute under review, with the reservation "If it be legitimate to look at them." *Davis* v. *Pringle,* 268 U. S. 315, 318.

Such hesitations and restraints are in limbo. Courts examine the forms rejected in favor of the words chosen. They look at later statutes "considered to throw a cross light" upon an earlier enactment. See *United States* v. *Aluminum Co. of America,* 148 F. 2d. 416, 429. The consistent construction by an administrative agency charged with effectuating the policy of an enactment carries very considerable weight. While assertion of authority does not demonstrate its existence, long-continued, uncontested assertion is at least evidence that the legislature conveyed the authority. Similarly, while authority conferred does not atrophy by disuse, failure over an extended period to exercise it is some proof that it was not given. And since "a page of history is worth a volume of logic," *N. Y. Trust Co.* v. *Eisner,* 256 U. S. 345, 349, courts have looked into the background of statutes, the mischief to be checked and the good that was designed, looking sometimes far afield and taking notice also as judges of what is generally known by men.

Unhappily, there is no table of logarithms for statutory construction. No item of evidence has a fixed or even average weight. One or another may be decisive in one set of circumstances, while of little value elsewhere. A painstaking, detailed report by a Senate Committee bearing directly on the immediate question may settle the matter. A loose statement even by a chairman of a committee, made impromptu in the heat of debate, less informing in cold type than when heard on the floor, will hardly be accorded the weight of an encyclical.

Spurious use of legislative history must not swallow the legislation so as to give point to the quip that only when legislative history is doubtful do you go to the statute. While courts are no longer confined to the language, they are still confined by it. Violence must not be done to the words chosen by the legislature. Unless indeed no doubt can be left that the legislature has in fact used a private code, so that what appears to be violence to language is merely respect to special usage. In the end, language and external aids, each accorded the authority deserved in the circumstances, must be weighed in the balance of judicial judgment. Only if its premises are emptied of their human variables,

can the process of statutory construction have the precision of a syllogism. We cannot avoid what Mr. Justice Cardozo deemed inherent in the problem of construction, making "a choice between uncertainties. We must be content to choose the lesser." *Burnet* v. *Guggenheim,* 288 U. S. 280, 288. But to the careful and disinterested eye, the scales will hardly escape appearing to tip slightly on the side of a more probable meaning.

"CANONS OF CONSTRUCTION"

Nor can canons of construction save us from the anguish of judgment. Such canons give an air of abstract intellectual compulsion to what is in fact a delicate judgment, concluding a complicated process of balancing subtle and elusive elements. All our three Justices have at one time or another leaned on the crutch of a canon. But they have done so only rarely, and with a recognition that these rules of construction are not in any true sense rules of law. So far as valid, they are what Mr. Justice Holmes called them, axioms of experience. See *Boston Sand Co.* v. *United States,* 278 U. S. 41, 48. In many instances, these canons originated as observations in specific cases from which they were abstracted, taken out of the context of actuality, and, as it were, codified in treatises. We owe the first known systematic discussion of statutory interpretation in England to the scholarship of Professor Samuel E. Thorne, Yale's Law Librarian. According to Professor Thorne, it was written probably prior to 1567. The latest American treatise on the subject was published in 1943. It is not unfair to say that in the four intervening centuries not much new wisdom has been garnered. But there has been an enormous quantitative difference in expounding the wisdom. "A Discourse upon the Exposicion & Understandinge of Statutes" is a charming essay of not more than thirty pages. Not even the freest use of words would describe as charming the latest edition of Sutherland's Statutory Construction, with its three volumes of more than 1500 pages.

Insofar as canons of construction are generalizations of experience, they all have worth. In the abstract, they rarely arouse con-

troversy. Difficulties emerge when canons compete in soliciting judgment, because they conflict rather than converge. For the demands of judgment underlying the art of interpretation, there is no vade-mecum.

But even generalized restatements from time to time may not be wholly wasteful. Out of them may come a sharper rephrasing of the conscious factors of interpretation; new instances may make them more vivid but also disclose more clearly their limitations. Thereby we may avoid rigidities which, while they afford more precise formulas, do so at the price of cramping the life of law. To strip the task of judicial reading of statutes of rules that partake of the mysteries of a craft serves to reveal the true elements of our problem. It defines more accurately the nature of the intellectual responsibility of a judge and thereby subjects him to more relevant criteria of criticism. Rigorous analysis also sharpens the respective duties of legislature and courts in relation to the making of laws and to their enforcement.

FAIR CONSTRUCTION AND FIT LEGISLATION

The quality of legislative organization and procedure is inevitably reflected in the quality of legislative draftsmanship. Representative Monroney told the House last July that "95 percent of all the legislation that becomes law passes the Congress in the shape that it came from our committees. Therefore if our committee work is sloppy, if it is bad, if it is inadequate, our legislation in 95 percent of the cases will be bad and inadequate as well." And Representative Lane added that "In the second session of the 78th Congress 953 bills and resolutions were passed, of which only 86 were subject to any real discussion." See 92 Cong. Rec. pp. 10040 and 10054, July 25, 1946. But what courts do with legislation may in turn deeply affect what Congress will do in the future. Emerson says somewhere that mankind is as lazy as it dares to be. Loose judicial reading makes for loose legislative writing. It encourages the practise illustrated in a recent cartoon in which a senator tells his colleagues "I admit this new bill is too

complicated to understand. We'll just have to pass it to find out what it means." A modern Pascal might be tempted at times to say of legislation what Pascal said of students of theology when he charged them with "a looseness of thought and language that would pass nowhere else in making what are professedly very fine distinctions." And it is conceivable that he might go on and speak, as did Pascal, of the "insincerity with which terms are carefully chosen to cover opposite meanings." See Pater, Miscellaneous Studies, Essay on Pascal, pp. 48, 51.

But there are more fundamental objections to loose judicial reading. In a democracy the legislative impulse and its expression should come from those popularly chosen to legislate, and equipped to devise policy, as courts are not. The pressure on legislatures to discharge their responsibility with care, understanding and imagination should be stiffened, not relaxed. Above all, they must not be encouraged in irresponsible or undisciplined use of language. In the keeping of legislatures perhaps more than of any other group is the well-being of their fellow-men. Their responsibility is discharged ultimately by words. They are under a special duty therefore to observe that "Exactness in the use of words is the basis of all serious thinking. You will get nowhere without it. Words are clumsy tools, and it is very easy to cut one's fingers with them, and they need the closest attention in handling; but they are the only tools we have, and imagination itself cannot work without them. You must master the use of them, or you will wander forever guessing at the mercy of mere impulse and unrecognized assumptions and arbitrary associations, carried away with every wind of doctrine." (See J. W. Allen's Essay on Jeremy Bentham, in The Social and Political Ideas of the Revolutionary Era (ed. by Hearnshaw), pp. 181, 199.)

Perfection of draftsmanship is as unattainable as demonstrable correctness of judicial reading of legislation. Fit legislation and fair adjudication are attainable. The ultimate reliance of society for the proper fulfilment of both these august functions is to entrust them only to those who are equal to their demands.

Committee Report

COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

INTERIM REPORT ON RECOMMENDATIONS FOR REVISION OF WAGNER ACT*

The Wagner Act as presently in effect has been called a "one-sided" act, inasmuch as it prescribes the various unfair labor practices on the part of employers and provides penalties therefor, but does not prescribe any unfair labor practices on the part of employers or unions. It was originally enacted for the purpose of preventing abuses of power by employers. It was thought that the power of unions was not sufficiently great to require similar legislation with respect to unions at that time.

In the intervening years between the enactment of the Wagner Act and the present time the power of labor unions has become at least as great as that of employers, and abuses of such power have seriously affected the national economy. In the opinion of the Committee, therefore, it is time for a thorough revision of the Wagner Act to prevent abuses of power by labor unions and to provide remedies where such abuses persist.

In considering various proposals for the revision of the Wagner Act, the Committee has attempted to keep in mind that the primary purpose of such revision should be to prevent abuses of power by labor unions and thus to promote industrial peace. It has rejected some proposed revisions to the Act upon the ground that they are not necessary for either of these purposes.

It is obvious that few subjects are more controversial than that which is here dealt with, and it is hardly to be expected that the views of the members of the Committee would be unanimous with regard thereto. This report represents only the opinions of a majority of the Committee on the various recommendations. Some members of the Committee desired more extensive amendment of the Wagner Act, while others did not believe any amendment was required. Therefore, while the names of all members of the Committee are appended to this report, it does not represent acquiescence by individual members with the entire report. This report, it is believed, represents a

* *Editor's Note:* This report was submitted to the Association at the Annual Meeting on May 13, 1947. No action on the report was taken by the Association. It is published here because of its intrinsic interest only.

reasonable middle course between divergent views, and the recommendations herein contained, if enacted, would go far toward imposing upon labor unions checks and balances similar to those to which employers are now subject.

The following then, is a statement of the principles which the Committee proposes as bases for amendments to the Wagner Act, in the belief that their enactment into law would further the cause of industrial peace, with maximum fairness to all concerned:

1. Employers, employees, unions and employer organizations should be obligated to observe and comply with the orders duly made by any statutory Administrative Board or Agency which has jurisdiction of the controversy or proceedings, and a violation of such obligation should be an unfair labor practice.

2. All controversies as to the representation of employees for collective bargaining purposes should be decided by the N. L. R. B.; and it should be an unfair labor practice for any group of employees or a union to strike for the purpose of effecting recognition as a collective bargaining agent provided the employer consents to a prompt election, or to strike for the purpose of protesting or rendering ineffective a decision of such Board or Agency.

This is intended to prevent so-called "organizational" strikes. In such cases the strike is called to enforce recognition of a union which does not represent a majority of the employees, and which, therefore, cannot win, or has actually lost, an election. Where the employer consents to a prompt election, and does not engage in delaying tactics, such strikes are contrary to the majority rule principle of the Act.

3. During the term of a collective bargaining agreement there should be neither a lockout nor a strike, and all grievances or disputes unresolved by the parties arising under such agreement shall be arbitrated. A violation of such obligation should constitute an unfair labor practice.

Compulsory arbitration under this provision would apply only to differences arising under existing bargaining contracts. It is not intended to compel arbitration as to the terms of a contract, but only as to the interpretation of the agreement when made.

4. It should constitute an unfair labor practice for employees or a union to engage in a jurisdictional strike.

Jurisdiction strikes occur when each of two or more unions claims the exclusive right to do certain work or to represent certain em-

ployees. There is no excuse for making the employer and the public bear the brunt of such disputes. They should be settled between the unions, by arbitration if necessary.

5. The Federal and State anti-injunction acts should be amended. Under such acts it is now impossible to obtain a prompt remedy—and in some cases any remedy—against secondary boycotts. Such remedy is essential, and to establish such right the following amendment should be incorporated in the acts:

"An Injuction may issue after hearing, but without compliance with the other provisions of this title, to prohibit the threatened commencement of, or the continuance of, a 'secondary boycott' as herein defined, at the suit of any person against whom such secondary boycott is threatened or in effect, unless the Court shall find that such secondary boycott cannot be enjoined without directly impairing the right of the defendants to strike or picket against a person with whom the defendants have a bona fide labor dispute.

" 'Secondary boycott' as used herein shall mean picketing of the premises of, concerted refusal to work for, or refusal to process, install, or otherwise handle merchandise, material or other products for, any person who is not a party to the labor dispute which such acts are intended to affect."

In addition to any penalties invocable because of the violation to the foregoing proposed amendment, a violation of the injunction should constitute an unfair labor practice by the employees or union involved.

Secondary boycotts usually result in loss and inconvenience to innocent bystanders who have no connection with the labor dispute out of which such boycotts arise. Parties to a dispute should be compelled to settle their differences between themselves, and should not be permitted to involve innocent parties therein.

6. To the end that labor disputes may be settled without violence and that the employees involved therein may freely exercise their rights it should constitute an unfair labor practice for employees or a union (a) to exercise violence or to use force against an employee in an endeavor to persuade him to join or not to join a union, or (b) to exercise violence, or to use force, against any person in an endeavor to persuade such person to participate in a strike or not to enter upon the property of an employer against whom a strike is pending.

At present the employer is forbidden to threaten, intimidate or interfere with his employees in their selection of a bargaining agent. No similar prohibition exists against unions. Where coercive practices by unions have been urged by employers as a ground for setting aside an election, the N. L. R. B. has refused to entertain such plea, on the ground that it has no jurisdiction over such practices by unions. It should be given such jurisdiction.

7. It should constitute an unfair labor practice for employees or a union to strike while employed by the United States or any agency or department thereof, or while employed at any place of work of which the United States, or any agency or department thereof, has duly taken possession and is operating in accordance with the provisions of law.

There is no statutory prohibition at present against strikes by federal employees. Interference with the orderly functioning of government cannot be tolerated, and a statutory remedy should be provided therefor.

8. The process of fact finding and mediation should be greatly expanded to facilitate the settlement of industrial disputes and should be implemented by legislation requiring a waiting period of sixty days while such processes are operating. For this purpose the legislation should provide that, when collective bargaining has failed to result in an agreement, a fact finding board should be appointed by the Executive in proper cases affecting the public health and safety or the national economy. The report of such fact finding board should be for the purpose of informing the public of the facts and of aiding the parties to the controversy to reach an agreement by collective bargaining. The board should not be an arbitrator, nor should its findings or recommendations be binding upon the parties to the dispute. In these cases which do not affect the public health and safety or the national economy, resort should be had to mediation.

The use of fact finding boards, in the opinion of the Committee, should be confined to cases affecting public health or safety or the national economy. The ordinary processes of mediation are satisfactory for less important disputes.

9. During the said period of sixty days, there should be neither a strike nor a lockout, provided such safeguards as are necessary are included in the statute so as reasonably to insure the expeditious conclusion of the fact finding board, or the

mediation proceedings, and provided further that such prohibition against a strike should not be operative unless the employer in question agrees that the wage provisions, if any, of the new collective bargaining agreement which may be entered into during the cooling-off period, or any extension thereof which may be agreed upon by the parties, are to be retroactive to the date when the previous collective bargaining agreement expired, or to the date when the fact finding board or mediator is appointed if there is no expiring collective bargaining agreement. A violation of such obligation should constitute an unfair labor practice, and if the violation is by a labor organization, any stipulation with regard to retroactive pay increases shall be null and void.

Suggestions for cooling-off periods are contained in many proposals now being considered by Congress, but they do not include the important proviso making the eventual contract apply from the beginning of the cooling-off period or the end of an existing contract. Employees should not be deprived of their rights to strike without this protection.

10. No union should be permitted to have what is commonly known as a closed or a union shop labor agreement if the union places any unreasonable restraints on admission to membership.

Whatever may be said for the closed or union shop, it would seem that no such device should be available to a closed union.

11. Democratic procedures in the administration of a union should be required, and the minimum standards should be, (a) election of officers of the local and central body at least once every four years, (b) reasonable accountings to the membership at least once a year, and (c) adequate machinery for a fair trial for a union member and adequate machinery for a fair hearing on appeal after such trial before loss of membership, resulting in the deprivation of a job, occurs; and any union that fails to comply with such minimum democratic standards should not be permitted to have what is commonly known as a closed or union shop labor agreement.

12. As a protection for an employee who claims to have been deprived of his membership in a union, resulting in the deprivation of a job, without such fair trial and fair hearing on appeal, the courts should be expressly authorized in a proper case to require the union to permit such employee to continue his employment pending the court proceeding; and it should

constitute an unfair labor practice for an employee or a union to request, or to strike to compel, an employer to terminate the employment of an employee prior to the decision in such fair trial and on such fair hearing on appeal, or, if a court has required the continuation of such employment, during the continuance of such order.

13. Loss of membership in a union shall not operate to deprive such member of a job if the loss of membership was due to, (a) the failure or refusal of the member to contribute to a fund to be used in whole or in part for political purposes, or (b) the expression by the member of views as to the desirability of the employees' terminating membership in the union at the termination of the then existing collective bargaining agreement; and it should constitute an unfair labor practice for employees or a union to request, or to strike to compel, an employer to deprive an employee of his job for any such reason.

14. Penalties for the commission of an unfair labor practice by a union or by an employee should be provided. Such penalties should be commensurate with the wrong committed and the presence or absence of repetitive wrongs. In the case of the union the penalty should involve (a) fines, (b) liability in damages to the employer for the loss thereby caused, and, after repetitive wrongs, (c) loss of the right to represent employees for a specified period, and/or (d) the loss of the protection of the Labor Act. In the case of an employee, the penalty should involve the loss of the protection of the Labor Act. In the case of fines or damages the decision of the Board should be subject to full review by the courts both on the law and the facts.

15. The N. L. R. B. should be charged with the administration of the foregoing provisions, with the determination of whether unfair labor practices have been committed, with the fixing of penalties for violation and with the determination of whether the right to a closed or union shop agreement has been lost.

The foregoing recommendations numbered 11 to 15 are self-explanatory. Serious differences of opinion arose in the Committee about giving the N. L. R. B. power to impose fines and assess damages. The majority felt that such provision was necessary to discourage violation of the Act, and that adequate protection would be afforded by making such decisions subject to full review by the courts on both the law and the facts.

16. The right of an employer to express its opinion as to the advisability of unionization in general, or of a particular union,

should be made unequivocal in the absence of coercion contained in the expression of such views.

It has been said that the right of free speech now exists for employers. The right has, however, been so restricted and qualified by the N. L. R. B. under the so-called "pattern of action" and "captive audience" doctrines, that an unequivocal statutory statement with respect thereto is desirable.

17. No employer should be obligated to recognize as a bargaining agent for supervisory employees any local union which is also the recognized bargaining agent of the rank and file workers.

Whether or not supervisory employees should be forbidden entirely to join a union, the foregoing recommendation is a minimum protection which should be accorded to the employer in view of the supervisory employee's dual status.

In the foregoing we have used the word "strike" to include all concerted action designed to interfere with orderly processes of production or service.

Since this is the last report of this Committee for the current year, the Chairman takes this opportunity of thanking the members of the Committee for their tireless efforts in this difficult and controversial field of legislation.

Respectfully submitted.

MORRELL S. LOCKHART,
Chairman

AARON BENENSON
DAVID L. BENETAR
JOHN L. FREEMAN
HERBERT W. HALDENSTEIN
LAWRENCE HUNT
JAMES J. McGOWAN
EMIL SCHLESINGER
HERBERT J. FABRICANT
ARTHUR K. GARFINKEL
HYMAN N. GLICKSTEIN
NATHAN GREENE
ROBERT A. LEVITT
FREDERICK H. ROHLFS
WILLIAM C. SCOTT
H. PRESTON COURSEN
GEORGE G. GALLANTZ
JAMES ELLIOTT HUGHES
ANDRE MAXIMOV
ARTHUR E. PETTIT
C. DICKERMAN WILLIAMS
BURTON A. ZORN

SUPPLEMENTARY NOTE TO FOREGOING REPORT

The foregoing report was prepared prior to the introduction by the Senate Labor Committee of the bill which was recently passed by the Senate. The President of the Association has asked me to supplement

the foregoing report by a brief indication of how the bill as passed by the Senate and how the bill as previously passed by the House meet or or fail to meet the recommendations contained in the foregoing report.

The following comments deal only with principles, and not with questions of draftsmanship.

Recommendations 1 and 2: The Senate bill does not meet the issue of the "organizational" strike squarely. It does give the employer a right in certain cases to petition the N. L. R. B. to hold an election, and it outlaws strikes to enforce recognition where another union has been certified as the bargaining agent. The House bill is more nearly in accord with these recommendations.

Recommendation 3: Neither bill compels arbitration of disputes arising under an existing contract, but the Senate bill makes it an unfair labor practice to violate an existing agreement or to refuse to arbitrate where the agreement provides for arbitration.

Recommendation 4: Both the Senate and House bills outlaw jurisdictional strikes.

Recommendation 5: Both the Senate and House bills outlaw secondary boycotts, but, while the House bill permits the issuance of an injunction at the suit of the injured party, the Senate bill permits the issuance of such injunction only at the suit of the N. L. R. B. The House bill also provides for treble damages.

Recommendation 6: Both House and Senate bills contain provisions substantially in accord with this recommendation.

Recommendation 7: The Senate bill contains no provision with respect to strikes by government employees. The House bill outlaws such strikes.

Recommendations 8 and 9: Both House and Senate bills contain provisions substantially along the lines here recommended. Neither, however, provides that the contract, when negotiated, shall be retroactive to the termination of the prior contract or the commencement of the cooling-off period.

Recommendation 10: Both House and Senate bills outlaw the closed shop entirely. With respect to the union shop, which both bills permit under certain circumstances, a restriction in accord with this recommendation is included.

Recommendations 11 to 13: The House bill contains provisions substantially effecting the results desired in these recommendations, and goes further in including other requirements. The Senate bill does not have a complete 'bill of rights" for union members. It does provide that no employee may be discharged under a union shop agreement except for nonpayment of dues, or engaging in dual-union

activities at a time other than when the existing contract is about to expire. The Senate bill also requires periodic financial statements by unions to their members.

Recommendations 14 and 15: Both Senate and House bills contain provisions imposing penalties for commission of unfair labor practices by unions, and, in general, these remedies involve loss of rights under the Wagner Act. They do not, however, give the N. L. R. B. power to impose fines or assess damages, other than the award of back pay to an unfairly discharged employee.

Recommendation 16: This recommendation is embodied in both Senate and House bills.

Recommendation 17: Both Senate and House bills deny to supervisory employees any protection under the Wagner Act. This is in accord with a resolution adpoted by this Association during the past year. The definition of supervisory employees in the Senate bill, however, is more restricted than the definition in the House bill.

In addition to revising the Wagner Act both bills contain other provisions, on some of which this Association has previously expressed an opinion, for example:

The House bill contains a prohibition on industry bargaining. The Senate bill contains no such prohibition. This Association recently adopted a resolution stating that it did not favor such a ban on industry-wide bargaining.

The house bill contains a prohibition against mass picketing and violence in picketing. The Senate bill contains no such provision. This Association recently adopted a resolution favoring such prohibition.

Both bills contain provisions permitting unions to be sued in the Federal Courts for breach of contract. This Association recently adopted a resolution favoring action to make unions responsible for breach of contract.

Each bill also contains material which has not previously been passed upon by the Association or its Committee on Labor and Social Security Legislation. For example: both bills prohibit check off of union dues without the individual consent of the employees; the House bill prohibits payment by employers to union heath and welfare funds, whereas the Senate bill prohibits such payments only where employers and employees are not equally represented in the administration of such funds; both bills deny collective bargaining rights to a union if any of its officers can reasonably be regarded as a Communist or Communist sympathizer; and both bills contain various provisions for procedural and administrative reorganization of the National Labor Relations Board.

MORRELL S. LOCKHART

The Library

SIDNEY B. HILL, *Librarian*

LIST OF PUBLICATIONS PRESENTED BY AUTHOR MEMBERS DURING 1946–47

In any selected bibliography of American literature will be found the influence of the legal mind upon more than three centuries of American culture.

The writings of Francis Scott Key, William Wetmore Story, J. Maurice Thompson, George Tucker, Charles Dudley Warner and (Thomas) Woodrow Wilson, all lawyers . . . . will be found in almost every selected list of collectors' items.

In the now famous One Hundred Influential American Books, printed before 1900, selected by the Grolier Club in 1946, and chosen on the basis of their influence on the life and culture of the people will be found the following thirteen publications from the pens of lawyers: Brief Narrative and Trial of Peter Zenger, 1736; The Declaration of Independence, 1776; The Constitution of the United States, 1787; Northwest Territory Ordinance, 1787; The Federalist, 1788; The Bill of Rights, 1789; Marbury vs Madison, 1804; The Monroe Doctrine, 1823; Dana. Two Years Before the Mast, 1840; The Dred Scott Decision, 1857; The Emancipation Proclamation, 1863; Lincoln's Gettysburg Address, 1863; Holmes. Common Law, 1889.

Our members have furthered throughout the years this tradition of their earlier colleagues. The library is fortunate that during the past year our author members, through their generous gifts, have greatly enriched our collection. That the law is not always a "jealous mistress" is apparent from the wide variety of subjects about which our members have written.

Abrams, Charles. The Future of Housing. New York, Harper & Bros. 1946. 428p.

Bacal, Jacques and Sloane, Louise. ABC of Divorce. New York, E. P. Dutton & Co., Inc. 1947. 128p.

Backus, Richard C. and Eder, Phanor J. A Guide to the Law and Legal Literature of Colombia. Washington, Library of Congress. 1943. 222p.

Backus, Richard C. and Eder, Phanor J. Supplement to a Guide to the Law and Legal Literature of Colombia. 1946. 20 Tul. L. Rev. 392–410.

Bates, Harry Cole. The Impact of War on Life Insurance. Presented before Insurance Section of American Bar Association. Detroit, August 24, 1942. Mimeographed. 27p.

Belsterling, Charles S. Addresses. 1907–1939. Privately printed.

Belsterling, Charles S. William Preston and Newcastle-upon-Tyne and Philadelphia, Pennsylvania and Allied Families. Philadelphia, The Dolphin Press. 1934. 172p.

Bruen, Edward F. L. Certain Aspects of the writ—Capias Ad Satisfaciendum—and its Introduction into New York, being an Outline History of Imprisonment for Debt Past and Present. 1939. 17 Law Student. 17–23.

Burlingham, Charles C. Notes on the History of Burlingham, Veeder, Clark & Hupper. 1946. 29p.

Carlston, Kenneth S. Process of International Arbitration. New York, Columbia University Press. 1946. 318p.

Cohen, Julius Henry. They Builded Better Than They Knew. New York, Julian Messner, Inc. 1946. 376p.

Dunn, Charles Wesley. The Validity of a Uniform Delivered Price. Paper presented before Section on Food, Drug and Cosmetic Law of the New York State Bar Association. Jan. 22, 1947. 14p.

Ernst, Morris L. The First Freedom. New York, Macmillan Co. 1946. 316p.

Fallon, Perlie P. The Commerce Clause from the Schechter Case Through the 1944–1945 Term. 1946. 19 Temp. U.L.Q. 421–448.

Gray, Herman A. Should State Unemployment Insurance Be Federalized? New York and Washington, American Enterprise Association, Inc. 1946. 71p.

Hayes, James V. Standardization and the Antitrust Laws. New York, American Standards Association. 1946. 4p.

Hazard, John N. Soviet Domestic Policy in the Postwar World. 1946. 40 Am. Pol. Sci. Rev. 80–89.

Kaplan, H. Eliot. Legal Trends in Civil Service. 1944 Annual Survey of American Law. New York, New York University School of Law. 290–306.

Kelley, Nicholas. Co-operating to Make Workers Valuable. Presented at Colgate University March 18, 1946. 14p.

Kupfer, Milton Philip and Livingston, Irwin I. (of Chicago). Corn Exchange National Bank and Trust Co. vs Klauder Revisited: The Aftermath of the Implications. 1946. 32 Va. L. Rev. 910–938.
A Supplemental Note. 1947. 33 Va. L. Rev. 1–12.

Kupferman, Theodore R. Copyright—Co-Owners. 1945. 19 St. John's L. Rev. 95–110.

Magill, Roswell. Taxable Income. Revised. New York, The Ronald Press. 1945. 491p.

Pehle, John W. The Bretton Woods Institutions. Reprint. 1946. 55 Yale L.J. 1127–1139.

Pemberton, John Clifford. Defender of Vicksburg. Chapel Hill, University of North Carolina Press. 1942. 350p.

Prentice, Ezra P. Shall We Destroy Our Greatest Asset: Shall We Change the Economic System which Has Made Us the Greatest Industrial Nation on Earth? 1946. 9p.

Redley, Adolphus G. International Law At Its Crossroads. Reprint. 1946. 45 South Atlantic Quarterly. 165–175

Rheinstrom, Henry. L'Influence du Regime National-Socialiste sur le Droit Prive Allemand. Montreal, Bernard Valiquette. 1939. 64p.

Roberts, George. A History of the Libel Suit of Clarence H. Venner Against August Belmont. 1913. (Mr. Roberts Assisted Delancey Nicoll in the preparation).

Stichman, Herman T. The Function of Government as an Aid to Private Builders. An address at the New York Metropolitan Association of Real Estate Boards, Dec. 16, 1946. 13p.

Stimson, Henry L. The Decision to Use the Atomic Bomb. 1947. 194 Harper's Magazine. 97–107.

Swaine, Robert T. The Cravath Firm and Its Predecessors, 1819–1947. Vol. I, The Predecessor Firms, 1819–1906. Privately printed at Ad Press Ltd., New York, 1946. 782p.

Topken, William J. Swiss Wartime Economic Law: an Analysis and Compilation. 1945. 52p.

Vom Baur, F. Trowbridge. Methods of Judicial Review of Administrative Determinations. Mimeographed. 1937. 23p.

Waldman, Louis. Labor Lawyer. New York, E. P. Dutton & Co. 1944. 394p.

Wels, Richard Hoffman. Guam Looks to the U. S. A. Reprint from Asia and the Americas. July, 1946. 4p. America's Debt to the Guamanians. Reprint from Asia and the Americas. August, 1946. 3p.

Wherry, William M., Jr. Fee Schedules. A Device in Preventive Law. 1946. 21 N.Y.U.L.Q. Rev. 366–383.

Wolcott, Theodore E. Does the Jurisdiction of the California Commission Extend to Air Transportation. 1945. 33 California L. Rev. 114–127.

Wormser, Rene A. Personal Estate Planning in a Changing World. Revised Edition. New York, Simon and Schuster. 1945. 311p.

Wormser, Rene A. Theory and Practice of Estate Planning. Chicago, Callaghan & Co. 1946. 186p.